or rest in parol. The rule that an instrument or contract made in writing *inter partes*, must be deemed to contain the entire engagement or understanding, has no application: *Stanton* v. *Miller* (1874), 58 N.Y.192. Of course parol evidence is admissible to prove a condition resting in parol: *Madison, etc. Plank Road Co.* v. *Stevens, supra.* See *Foy* v. *Blackstone* (1863), 31 Ill. 538; *Brown* v. *Gilman* (1819), 4 Wheat. 255; *Koons* v. *Ferguson* (1865), 25 Ind. 388; *Freeland* v. *Charnley* (1881), 80 Ind. 132; *Campbell* v. *Thomas, supra.*

§ 24. *Statute of Frauds.*—"Where a promise is so far executed that a deed is delivered under it conditionally, it is taken out of the Statute of Frauds when the condition is fully performed, for, upon the performance of the condition, the deed becomes effective and the grantee is entitled to it:" *McCasland* v. *Ætna Life Ins. Co.* (1886), 108 Ind. 130. "But we have not discovered a single case in which it has been held, that one who has deposited a deed of land with a third person, with directions to deliver it to the grantee on the happening of a given event, but who has made no valid executory contract to convey the land, may not revoke the directions to the depositary and recall the deed at any time before the conditions of the deposit have been complied with; provided those conditions are such that the title does not pass at once to the grantee upon delivery of the deed to the depositary:" *Campbell* v. *Thomas, supra*, doubting *Thomas* v. *Sowards* (1870), 25 Wis. 631. So, it is held that a parol contract of sale of lands cannot be enforced simply from the fact that a deed for them was placed in escrow; that an escrow is not sufficient to take the sale out of the Statute of Frauds: *Freeland* v. *Charnley, supra;* disapproving 3 Wash. on Real Prop. 303, and *Cagger* v. *Lansing, supra*, overruled in *Cagger* v. *Lansing* (1871), 43 N. Y. 550. To same effect, Reed on Statute of Frauds, § 388; *Redding* v. *Wilkes* (1791), 3 Bro. Ch. 400; *Bissell* v. *Farmers' Bank* (1853), 5 McLean, 495; *Sanborn* v. *Sanborn* (1856), 7 Gray (Mass.), 142; *Underwood* v. *Campbell* (1843), 14 N. H. 393; *Weir* v. *Batdorf*, *Patterson* v. *Underwood* (1868), 29 Ind. 607. Instruments delivered to another on condition that other parties are to sign them before they are binding, are not delivered in escrow; they are incomplete instruments, and the doctrine of escrow is not strictly applicable to them: *Berry* v. *Anderson, supra.*

W. W. THORNTON.

Crawfordsville, Ind.

Supreme Court of Texas.

KASLING ET AL. *v.* MORRIS.

An offer to pay a reward for the detection of a criminal, is binding upon the private citizen making it, when acted upon.

It is not part of the official duty of a constable, who has not seen the commission of an offence, and has not any information as to the criminal, and has no warrant, to search a man (casually met on the road) upon mere suspicion.

APPEAL from the District Court of Cass County.

On the 10th day of March, 1886, at night, the storehouse

of appellee, R. A. Morris, in the town of Linden, Cass County, Texas, was broken into, and robbed of about $175 in money. Early next morning, and immediately upon the discovery of the burglary, Morris publicly, and many times, offered a reward of $1000 for the arrest and conviction of the thief or thieves. Plaintiff, E. S. Kasling, was the constable of the town and precinct where the burglary was committed, and plaintiff Simmons was a private citizen, who had, on some occasions, acted in an official capacity as deputy-sheriff. Among others, Morris told Kasling he would give $1000 for the arrest and conviction of the party committing the burglary, and Kasling informed Simmons of the reward offered, and requested him to go with him in search of the thief. Rand, Taylor, and other parties also mounted horses, and went in different directions to try to find the burglar or burglars; the hope of the reward being the immediate inducement. Kasling and Simmons mounted horses, and rode some miles into the country in search of the burglar or burglars, and, on their return, saw a man on foot, near the road, whom they accosted, and finally informed that they must search him. They were ready with their pistols, and, fortunately, "got the drop on him," or, doubtless, one or both of them would have been shot; for, on forcing him to hold up his hands, they found two pistols on different portions of his person, to one of which he had motioned his hand, and also conclusive proof that he was a burglar, besides the whole of the stolen money, and a pistol that had been stolen on the night of the house burglary from another store in Linden which had also been broken into. They arrested him without warrant or affidavit, and took him at once to Linden, and lodged him in jail. Kasling then made the necessary affidavit, and procured a warrant, and, on the trial, the prisoner waived an examination, and was committed by the magistrate to answer the charge of the burglary of Morris' store and safe. At the ensuing term of the District Court, held in and for Cass County, Texas, the prisoner, James Sanders, was duly indicted for the burglary and theft in Morris' store, and for other felonies committed the same night, and was tried and convicted, E. S. Kasling being present, and testifying on behalf of the State.

Morris disobeyed the process of the State and left the county to avoid testifying against him. Sanders was duly convicted of said offence and consigned to the penitentiary. After the conviction of Sanders, appellants went to Morris and demanded the $1000 reward. Morris at first evaded, and asked delay and time to see his attorney, and finally refused to pay; whereupon appellants brought this suit, which was submitted to the Court, without a jury, on the above facts, and was decided against appellants and in favor of Morris, both on the law and the facts; and appellants have taken this appeal.

E. S. Eberhardt and *Todd & Rowell*, for appellants.

WALKER, J. Oct. 26, 1888. The foregoing statement, adopted from the brief of the appellants, presents a fair and reasonably full statement of the case shown in the record. The statement of facts shows that Morris offered the reward as alleged. The offer was public, and repeatedly made, and in several instances was accompanied by special request to parties to act upon it, and to engage in the search for the guilty party. In one or more instances, he was asked if he was serious in making it, and replied that he was, and had the money to pay it. Unquestionably such an offer, when and after it has been acted upon, becomes binding upon the party making it: *Hayden* v. *Souger* (1877), 56 Ind. 42.

It is not disputed that Kasling and Simmons acted upon the offer, and arrested Sanders, who was subsequently convicted for the offence of burglary in breaking open and stealing from Morris' storehouse. Morris, the defendant, testified to his suspicions, which he told to others, that the burglary was another "Keating affair" (meaning that he thought it had been committed by persons residing in the neighborhood), and that he had named one as suspected, and that he thought three or more persons had been engaged in the crime, and substantially, that his motive for making the offer was to rid the neighborhood of dangerous criminals. However true his testimony may have been, the testimony of many witnesses supports the allegation in the petition, and that those motives in fact form no part of his public offer. That offer did not restrict the reward, so that it was to be given upon

the detection, arrest and conviction of the village blacksmith and his supposed associates, as the guilty parties. Nor would Kasling's knowledge of the motives inducing to the offer, or the direction of Morris' suspicions, of itself alter the terms of the public offer, or prevent Kasling from acting upon it. Of course, if, in the private conference between Morris and Kasling, the latter was informed that the offer was restricted, it would, to that extent, require notice by Kasling. It is noted, however, that Kasling distinctly denies the statement made by Morris as to the conversation between them before the arrest. What passed in that conversation is a question of veracity between the two interested parties.

Nor were the plaintiffs disqualified from earning and exacting the reward under the offer, by reason of the fact that Kasling was constable of the beat in which the arrest of Sanders was made. Kasling requested Simmons to arm himself and join in the search, assuring him of the offered reward. It appears that the arrest was made several miles from the county-seat, and was made without warrant. Kasling had not seen the offence committed, nor had he any information that Sanders was the guilty party, other than his own suspicions when they met on the road. The act was not required by his official duty. It is well recognized that an officer is not entitled to reward beyond his legal fees for the performance of an act which it is his official duty to perform. The employment and payment for extra-official work, though incident to his official duty, is not against public policy. Detective work is usually directed to the task of hunting up the perpetrator of some offence, where the ordinary machinery of the Courts needs such aid. This work is only incidental to the official duty of the constable or sheriff: Rev. Stat. Tex. Art. 4537; Code Crim. Proc. Tex. Arts. 44, 45; Add. Cont. § 18. The testimony shows that the offer was made, and its terms met, by a great preponderance in the testimony; so great that judgment should be reversed.

Reversed and remanded.

In his Principles of Contract (4th ed. 3–12), Mr. Pollock quotes with approbation section eight of the Indian Contract Act: "Performance of the conditions of a proposal or the acceptance of any consideration for a

reciprocal promise which may be offered with a proposal, is an acceptance of the proposal;" and says, "this rule contains the true legal theory of offers of reward made by public advertisement for the procuring of information, the restoration of lost property, and the like."

In the discussion of this subject, the learned author says that a difficulty is raised by the suggestion, in certain cases, that the first offer or announcement is not a mere proposal, but constitutes a kind of anomalous floating contract with the unascertained person who shall fulfil the prescribed condition. He adds: "A *vinculum juris*, with one end loose, is, on principle, an inadmissible conception, to say nothing of the inconvenience which would come from treating the offer as an irrevocable promise:" Pollock on Contracts (4th ed.), 19.

Among the cases cited as countenancing this doctrine was *Williams* v. *Carwardine* (1833), 4 B. & Ad. 621. That case was stated as follows: A reward had been offered by the defendant for information which should lead to the discovery of a murderer. A statement which had that effect, was made by the plaintiff, but not to the defendant, nor with a view to obtaining the reward, nor, for aught that appeared, with any knowledge that a reward had been offered. The Court held that the plaintiff had a good cause of action. In commenting on this decision, the learned author says that it sets up a contract without any *animus contrahendi*, and that if it be now law (which he doubts), it goes to show that in these cases there may be an acceptance constituting a contract, without any communication of the proposer to the acceptor, or of the acceptance to the proposer. He also criticises the statement of PARKE, J., that there was a contract with any person who performed the condition mentioned in the advertisement, as savoring of the notion that there is an inchoate or unascertained obligation from the publishing of the offer, and adds: "If such were indeed the *ratio decidendi*, we need not hesitate to say that at the present day it cannot be maintained:" Pollock on Contracts (4th ed.), 20.

These cases differ from those in which services, such as are usually paid for, are performed for the defendant's benefit, with his approbation, express or implied, and in which a promise to pay may be implied and recovery allowed, on the footing of a *quantum meruit*. In the other cases, where the obligation rests purely upon express contract, the question presented is whether performance of the terms of the offer, without knowledge of the proposal, will constitute a contract.

Mr. Pollock's dissent from the affirmative of this proposition is supported by the decisions of the American Courts.

In *Ball* v. *Newton* (1851), 7 Cush. (Mass.) 599, the action was brought on a written promise by a third person to pay certain fees in the case of an insolvent debtor, provided they were not otherwise paid. After the paper was signed, the plaintiff was chosen assignee in insolvency. The agreement was delivered to the insolvent, retained and not delivered to the plaintiff until the proceedings in insolvency were concluded. At the trial, he offered to prove that he had performed the duties of assignee; that his services were reasonably worth a certain sum; that he had received nothing therefor; and that no property had come to his hands out of which he could pay himself. The Judge ruled, that upon the facts in evidence and those offered to be

proved, the plaintiff could not maintain his action. On exceptions to this ruling, the Court held that the paper was not of itself a contract, that there were no sufficient parties to make a contract, there being no promisee; that if the paper had been shown to the plaintiff, and he had accepted it, and had become assignee and performed the services upon the strength of it, that might have formed a contract; but that it did not appear that the plaintiff ever saw or heard of the paper until after he had discharged the duties of assignee, nor did it appear that he accepted the paper, or performed any services upon the strength of it, or in reliance upon it, or did any thing whatever to create a good consideration and make a contract between him and the defendant. The principle on which this case was decided had in prior cases been recognized in the same Court: *Wentworth* v. *Day* (1841), 3 Met. (Mass.) 352; *Loring* v. *City of Boston* (1844), 7 Id. 409.

In *Fitch* v. *Snedaker* (1868), 38 N. Y. 248, the defendant offered a reward for information which should lead to the apprehension and conviction of the person guilty of a murder. Before the plaintiff had seen or heard of the offer, one F. was arrested, tried, and convicted of the murder. The plaintiffs brought an action to recover the reward. On the trial they proved the publication of the notice, and then offered to prove that before the notice was known to them they gave information which led to the arrest of F. This evidence was excluded. This ruling was sustained by the Court of Appeals. WOODRUFF, J., in delivering the opinion, said, "The question in this case is simple. A murderer having been arrested and imprisoned in consequence of information given by the plaintiffs, before they are aware that a reward is offered for such apprehension, are they entitled to claim the reward in case conviction follows? * * * I perceive, however, no reason for applying to an offer of reward for the apprehension of a criminal, any other rules than are applicable to any other offer by one, accepted or acted upon by another, and so relied upon as constituting a contract. * * * To the existence of a contract there must be mutual assent, or, in another form, offer and consent to the offer. The *motive* inducing consent may be immaterial, but the consent is vital. Without that there is no contract. How then can there be consent or assent to that of which the party has never heard?" This case was cited and followed in *Howland* v. *Lounds* (1873), 51 N. Y. 604, where it was held that a party returning stolen property without knowledge of the offered reward could not recover.

City Bank v. *Bangs* (1833), 2 Ewd. Ch. (N. Y.), 95, was an interpleader between claimants for a reward for the recovery of stolen property. The Vice-Chancellor adopted as a rule of decision, that to entitle a person to a reward, the acts done by way of performance must be done with a view to the acceptance and performance of the contract tendered by the offer, in the expectation of earning the reward if the effort is crowned with success. A similar ruling was approved in *Lee* v. *Trustees, etc.* (1838), 7 Dana (Ky.), 28; and *Stamper* v. *Temple* (1845), 6 Humph. (Tenn.), 113.

In *Mayor, etc. of Hoboken* v. *Bailey* (1873), 36 N. J. L. 490, the county of H. had offered a bounty for volunteers. The city of Hoboken, which was in the county, by resolution of the common council, offered an additional bounty to volunteers who should

be credited to the city. The plaintiff was recruited by an agent of the county, paid the county bounty and credited to a ward in the city. He sued the city for the additional bounty. It did not appear that the plaintiff knew that any bounty was offered by the city. Error was assigned to the judge's charge that the jury should find a verdict for the plaintiff, on the ground that there was no evidence of a contract by the city to pay the plaintiff the bounty, or of any consideration to support a recovery. The Court in the opinion, reversing the judgment for error in the charge, said: "The city was under no obligation to answer the demand which had been made under the conscription law upon its citizens who were liable to draft. The Act of the Legislature under the authority of which the resolution was passed, gave the corporate authorities power to use the funds of the city to supply volunteers, but did not enjoin it upon them as a duty. The benefit accruing from the relief of citizens from a draft was to individuals. Whatever aid was extended by the city towards the accomplishment of that end was purely gratuitous. * * * * The consideration for an undertaking of this kind is not the rendition of services beneficial to the promisor. In this respect the resolution of the common council is analogous to the offer of a reward for the apprehension of the perpetrator of a crime. * * * * Upon what principle does the right of recovery in such case rest? It cannot be maintained on the proposal of a reward, or bounty, for no contract will be concluded by a mere offer; nor will it result from the fact of performance, for an interest in the subject to which the offer relates is not essential to the validity of the contract, where the service is performed. The foundation of the right of action is the contract concluded between the parties, by the proposition by the one side, and its acceptance by the other, supported by the consideration which results from the performance of the stipulated service, on the faith of the promise contained in the offer. * * * * The right of action in such cases being founded in contract, for which no precedent consideration was paid, and in which no promisee is named, it would follow as a necessary result, that in order to complete the contract and give it mutuality, an assent in some way to the terms of the offer must be given. It is also equally clear that, where the service in itself is not beneficial to the promisor, it can be made available as the consideration of a contract, only where the person performing it was induced to do so by a request, express or implied, on the part of the promisor. * * * * There cannot be any assent or agreement to an offer of which the party has no knowledge. The proposal of a reward which was not within the knowledge of the person who happens, or from other considerations is induced, to perform the act designated as the condition on which the reward is payable, cannot by any rule of law or process of reasoning, be construed to be a precedent request, or to have operated as an inducement to do an act which is done in entire ignorance of the offer." The Court referred to *Williams* v. *Carwardine*, *infra*, and observed that as the case *in banc* was reported, it did not appear that the plaintiff acted without knowledge of the offer of a reward, and that in the report of the trial at *nisi prius*, it was manifest from the circumstances in evidence and the argument of counsel that the plaintiff's knowledge of the handbill was not disputed.

Referring to the case of *Williams* v.

Carwardine (1833), reported in 5 C. & P. 566, it is apparent from what took place at the trial, that the only controversy was, whether the plaintiff, acting from motives of revenge and not for the sake of the reward, came within the conditions of the handbill.

The same reporters add a note of the case *in banc*, in which Curwood, in response to the question by Lord Chief Justice DENMAN, if any doubt had been suggested, whether the plaintiff knew of the handbill at the time of making the disclosure, said that she must have known it, as it was placarded all over Hereford, the place where she lived. Mr. Justice LITTLEDALE added, that, if the person knew of the handbill and did the thing, that was quite enough. These expressions indicate that the learned justices inferred knowledge on the part of the plaintiff from the public nature of the notice, and the absence of testimony to the contrary. It is not to be supposed that the Court would have disregarded the principle laid down in the leading case of *Lampleigh* v. *Braithwait* (1603–25), Hob. 105, without some reference to that case. That was an action to recover a reward for procuring the King's pardon. The defence was the absence of sufficient consideration. It was agreed that a mere voluntary courtesy would not have a consideration to uphold an *assumpsit*, "but," said the Court, "if that courtesy were moved by a suit or request of the party that gives the *assumpsit*, it will bind; for the promise, though it follows, yet it is not naked, but couples itself with the suit before, and the merits of the party procured by that suit, which is the difference." And it appearing that the defendant had personally requested the plaintiff's endeavor, and that he had made his endeavor according to the request, the plaintiff had judgment.

Reasoning similar to that in *Mayor, etc. of Hoboken* v. *Bailey*, *supra*, has been applied by other Courts in the disposition of claims by volunteers to bounties offered by public authorities: *State* v. *Brown* (1866), 20 Wis. 287; *Frey* v. *Fon du Lac* (1869), 24 Id. 204; *Larimer* v. *McLean County* (1868), 47 Ill. 36; *Morgan* v. *Chester County* (1867), 56 Pa. 466; *Brecknock School District* v. *Frankhauser* (1868), 58 Id. 380.

Brecknock School Dist. v. *Frankhauser* was an action brought to recover a bounty, under an Act of the Pennsylvania Legislature. The evidence at the trial showed the plaintiff's enlistment, and his being credited to the quota of Brecknock Township. The Court, in reversing judgment for the plaintiff below, said: "The veteran must show that he enlisted under the offer, before a contract can be implied to pay him a bounty. * * * His credit to the township was an act of the government merely, in the distribution of the demands for military service, and created of itself no duty, perfect or imperfect, to pay him a bounty without an accepted offer."

In a few cases, knowledge of the proposal before performance of its terms has been held immaterial. Some of these decisions were founded upon unsatisfactory interpretations of *Williams* v. *Carwardine*, *supra*, and without further reasoning; *Russell* v. *Stewart* (1872), 44 Vt. 170, and *Burke* v. *Wells, Fargo & Co.* (1875), 50 Cal. 218. Others allowed recovery on grounds of public policy, independent of contract relations: *Dawkins* v. *Sappington* (1866), 26 Ind. 199; *Auditor, etc.* v. *Ballard* (1873), 9 Bush (Ky.), 572.

The weight of authority and the force of reasoning in the American Courts strongly support Mr. Pollock's protest against the inference of a con-

tract where, because of the general character of the offer, there can be no implied previous request to any definite person, and where want of knowledge by the plaintiff of the proposal excludes the idea of assent, the *vinculum juris* which alone can bind the minds of the contracting parties.

In most of the cases cited, the action was upon an offer where the proposer had no pecuniary interest in the performance of the condition, but in *Howland* v. *Lounds*, *supra*, the suit was on an offer of a reward by public advertisement by the owner for the return of stolen property. The same principle was properly applied. *Hayden* v. *Souger*, *supra*, was a case where a wounded man offered a reward and was compelled to pay it to the parties who heard of it and fulfilled its terms. No recovery can be had upon the ground of a contract where there is no assent, nor independent of contract, where the defendant could not reject the services without repudiating his property.

SHERRERD DEPUE.

Newark, N. J.

ABSTRACTS OF RECENT DECISIONS.

ACCIDENT INSURANCE.

No recovery can be had on policy which excepts liability if the death "may have been caused by intentional injuries inflicted by the insured or any other person," where the insured was shot and killed by a third person, though without provocation and while peaceably and lawfully engaged in his ordinary business: *Fischer* v. *Travelers' Ins. Co.*, S. Ct. Cal., Oct. 23, 1888.

ADMIRALTY.

Claim barred at law by the statute of limitations is barred in admiralty, by analogy, on the ground of laches: *Southard* v. *Brady*, U. S. C. Ct. S. D. N. Y., Oct. 15, 1888.

English law governs a proceeding *in rem* by a seaman for personal injuries received on board an English vessel while within English waters, though the seaman is a naturalized American citizen: *Roberts* v. *Egyptian Monarch*, U. S. D. Ct. D. N. J., Nov. 17, 1888.

AGENCY.

Ship's husband cannot, without express authority from owners, render them liable for money borrowed on the vessel's account, nor can the owners be held to have impliedly ratified such unauthorized borrowing from the mere fact that they received benefits therefrom in repairs made upon the vessel: *Arey* v. *Hall*, S. Jud. Ct. Me., Dec. 8, 1888.

ARBITRATION.

Boundary line was settled by award of arbitrators, but one of the parties subsequently entered upon the disputed land and erected a fence